

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM JASON WRIGHT,

Defendant-Appellant.

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UNPUBLISHED

August 9, 2007

No. 270538

Allegan Circuit Court

LC No. 03-013251-FC

Before: Smolenski, P.J., and Fitzgerald and Kelly, JJ.

PER CURIAM.

Defendant appeals as of right from the sentence imposed on remand on his jury conviction of criminal sexual conduct in the first degree, MCL 750.520b(1)(a). We affirm.

Defendant's conviction arises out of the long-term molestation of his stepdaughter, who was 12 years old at the time of trial. She maintained that defendant began having sexual intercourse with her when she was nine years old, and had done so at least 30 times. During trial, additional allegations arose concerning defendant's molestation of his sister. Defendant's sister stated that defendant sexually molested her several times per week from the time she was six to the time she was 15 years old, and that the abuse ended when defendant left home.

The sentencing guidelines recommended a minimum term range of 51 to 85 months. Initially, the trial court sentenced defendant to life in prison. This Court affirmed defendant's conviction, but remanded for resentencing on the ground that the trial court failed to articulate any substantial and compelling reasons for departure.<sup>1</sup>

On remand, the trial court sentenced defendant to 120 to 360 months in prison. In so doing, the trial court found that the guidelines did not adequately address the continued nature of defendant's conduct with the victim, and his earlier uncharged, lengthy molestation of his sister.

In reviewing a departure from the guidelines range, the existence of a particular factor is a factual determination subject to review for clear error, the determination that the factor is

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<sup>1</sup> *People v Wright*, unpublished per curiam opinion of the Court of Appeals, issued November 3, 2005 (Docket No. 256182).

objective and verifiable is reviewed de novo, the determination that the factors constituted substantial and compelling reasons for departure is reviewed for an abuse of discretion, and the extent of the departure is reviewed for an abuse of discretion. *People v Babcock*, 469 Mich 247, 265-269; 666 NW2d 231 (2003); *People v Abramski*, 257 Mich App 71, 74; 665 NW2d 501 (2003). In ascertaining whether the departure was proper, we must defer to the trial court's direct knowledge of the facts and familiarity with the offender. *Babcock, supra* at 270.

A court may depart from the sentencing guidelines range if it has a substantial and compelling reason to do so, and states on the record the reasons for departure. MCL 769.34(3); *People v Hegwood*, 465 Mich 432, 439; 636 NW2d 127 (2001). A court may not depart from a sentencing guidelines range based on an offense or offender characteristic already considered in determining the guidelines range unless the court finds, based on facts in the record, that the characteristic was given inadequate or disproportionate weight. MCL 769.34(3)(b); *People v Hendrick*, 261 Mich App 673, 682; 683 NW2d 218 (2004), *aff'd in part and rev'd in part* 472 Mich 555 (2005). Factors meriting departure must be objective and verifiable, must keenly attract the court's attention, and must be of considerable worth. *Babcock, supra* at 257-258. To be objective and verifiable, the factors must be actions or occurrences external to the mind and must be capable of being confirmed. *Abramski, supra*. We review a departure from the guidelines range to determine whether the sentence imposed is proportionate to the seriousness of the defendant's conduct and his criminal history. *Babcock, supra* at 263 n 20, 264. If a trial court articulates multiple reasons for its departure, and we determine that some of the reasons are invalid, we must determine whether the trial court would have departed, and if so to the same degree, on the basis of the valid reasons alone. *Id.* at 260-261, 273. If we are unable to make that determination, we must remand for resentencing or re-articulation. *Id.* at 271.

In this case, we conclude that the trial court's reasons for departing were objective, verifiable, substantial and compelling. Defendant argues that the trial court's reasons for departure were adequately addressed in the guidelines. We disagree. Offense variable (OV) 13 (continuing pattern of criminal behavior), which would have been scored at 50 points had defendant's assault of his sister occurred more contemporaneously with the instant offense, did not apply here. See MCL 777.43(2)(a). Likewise, had that assault resulted in a conviction, defendant would have received an increased prior record variable score. Further, although defendant was scored 50 points for OV 11, which contemplates the scoring of 50 points for two or more criminal sexual penetrations, MCL 777.41, the trial court did not abuse its discretion in determining that this scoring did not adequately reflect the extent of defendant's continued abuse of the victim here. Thirty penetrations is a substantially greater number than what is contemplated in OV 11.

We also find that the extent of the departure did not constitute an abuse of discretion, and that the sentence is proportionate.

Affirmed.

/s/ Michael R. Smolenski  
/s/ E. Thomas Fitzgerald  
/s/ Kirsten Frank Kelly